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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,230	06/14/2001	Richard T. Shoemaker	RD8030 US NA	7555

23906 7590 12/28/2004

E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
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4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

SALVATORE, LYNDIA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/881,230

Applicant(s)

SHOEMAKER ET AL.

Examiner

Lynda M Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-7, 10, 22 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 10, 22 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Response to Amendment***

1. Applicant's amendment and accompanying remarks filed 10/13/04 have been fully considered and entered. Claims 9 and 11 have been canceled, new claim has been added and claims 1 and 22 have been amended as requested. Applicant's amendment is not found patently distinguishable over the prior art made of record and Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3, 5-7,10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mills et al., US 5,447,771, in view of Smith et al., US 3,852,946. In addition, newly added claim 24 is also rejected under 35 U.S.C. 103(a) as being unpatentable over Mills et al., US 5,447,771, in view of Smith et al., US 3,852,946.

With regard to newly added claim 24, Applicant has incorporated the subject matter of previously rejected and now canceled claim 9. Thus, claim 24 is rejected for reasons previously set forth in section 4 of the last Office Action.

Applicant amended claim 1 to recite the limitation of a yarn denier per filament of "less than about 2.9". Applicant argues that the instantly claimed yarn is suitable for wearing apparel whereas the yarns taught by the combination of art is more suited for carpeting. Applicant further submits that Mills et al., teaches away from employing finer denier per filaments such as those instantly claimed. Applicant argues that Mills et al., does not provide any comparative examples with yarns having a denier per filament

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smaller than 4.5. Applicant also argues that no motivation exists to combine Smith et al., with Mills based on the supposition that Smith et al., is directed to high denier yarns for carpeting. These arguments are not found persuasive. With regard to Applicant's argument regarding the intended use of the yarn as suitable for wearing apparel, the Examiner respectfully reminds Applicant that no such limitations are presently recited.

With regard to the newly added limitation of "less than about 2.9", the Office does not recognize any patently distinguishable difference between 2.9 and 3.0. Recall, that Mills et al., teaches a denier per filament ranges from 3 to 30 (Column 5, 29-30). With regard to Applicant's argument as to a lack of teaching by Mills et al., to employ finer denier per filament yarns, it is the position of the Examiner that though it would be improper to ignore the teaching of a denier per filament range of 3-30, though not necessarily exemplified in the examples.

With regard to Applicant's lack of motivation to combine references the Examiner maintains that Mills et al., teaches all of the limitations of the claimed bilobal S or Z shaped yarn with the exception of the broad yarn denier range of between about 15-200. Thus, Smith et al., which is from the same field of endeavor as Mills et al., teaches voluminous yarns having improved hand, feel, and appearance (Column 1, 34-36). The voluminous yarns taught by Smith et al., are employable for a variety of uses such as a commercial carpet yarn (Column 2, 1-5). Suitable yarn forming materials include nylon, polyethylene terephthalate, and polyolefins (Claims 5 and Column 8, 10-21). Smith et al., teaches that the novel yarn, which is excellent as the pile for carpeting, generally have a total denier ranging from *100 or less* to 3,000 or more (Column 8, 25-30).

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Therefore, the Examiner maintains that sufficient motivation exists to combine the above aforementioned references. Said motivation is found in the expectation to provide carpets with improved hand, feel, and appearance.

4. Claims 22 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Mills et al., US 5,447,771, in view of Smith et al., US 3,852,946 as applied to claim 1 and further in view of Abel et al., US 4,071,468.

The rejection of claim 1 is maintained and Applicant has not provided any new arguments for which to base a rejection.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1482. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 20, 2004

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